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6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 LHF PRODUCTIONS, INC., a Nevada
Corporation,

10 Plaintiff,

11 v.

12 BRIAN KABALA, et. al.,

13 Defendants.

14 AND RELATED COUNTERCLAIMS
15

Case No.: 2:16-cv-02028-JAD-NJK

~~[PROPOSED]~~ **STIPULATED PROTECTIVE
ORDER**

16 Counter-Plaintiff BRIAN KABALA and Counter-Defendant LHF PRODUCTIONS, INC.
17 by and through the undersigned counsel, hereby stipulate and agree to the entry of the following
18 Stipulated Protective Order. Accordingly, it is ORDERED:

19 1. Scope. All materials produced or adduced in the course of discovery, including
20 initial disclosures, responses to discovery requests, deposition testimony and exhibits, and
21 information derived directly therefrom (hereinafter collectively “documents”), shall be subject to
22 this Order concerning Confidential Information as defined below. This Order is subject to the
23 Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and
24 calculation of time periods. For any source code produced in the action, a separate protective order
25 regarding source code shall exclusively apply thereto.

26 2. Confidential Information. As used in this Order, “Confidential Information” means
27 information designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” by the
28 producing party that falls within one or more of the following categories: (a) information

prohibited from disclosure by statute; (b) information that reveals trade secrets; (c) research, technical, commercial or financial information that the party *has maintained as confidential* (i.e. any information that has made publicly available not in violation of this Order or another order or agreement to keep such information confidential in any fashion, whether in another matter, online, or in any other context, is specifically excluded from the confidential protections of this Order); (d) medical information concerning any individual; (e) personal identity information; (f) income tax returns (including attached schedules and forms), W-2 forms and 1099 forms; or (g) personnel or employment records of a person who is not a party to the case. Information or documents that have been made available to the public not in violation of this Order or another order or agreement to keep such information confidential and/or have been or will be filed as part of any motion, pleading or document filed with this Court may not be designated as Confidential Information. Additionally, the term “trade secret” shall not be used to designate as Confidential any statement made or document filed in any pleading, declaration or other document filed with this Court prior to the entry of this Order unless such documents were designated as “trade secret” or “Confidential” in such prior disclosures.

3. Designation.

a. A party may designate a document as Confidential Information for protection under this Order if the document falls within the categories set forth in Section 2 herein above by placing or affixing the words “CONFIDENTIAL- SUBJECT TO PROTECTIVE ORDER” on the document and on all copies in a manner that will not interfere with the legibility of the document. As used in this Order, “copies” includes electronic images, duplicates, extracts, summaries or descriptions that contain the Confidential Information. The marking “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” shall be applied prior to or at the time the documents are produced or disclosed. Applying the marking “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” to a document does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order. Any copies that are made of any documents

marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the Confidential Information are not required to be marked.

b. The designation of a document as Confidential Information is a certification by an attorney or a party appearing pro se that the document contains Confidential Information as defined in this order.

4. Depositions. Deposition testimony is protected by this Order only if designated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" on the record at the time the testimony is taken. Such designation shall be specific as to the portions that contain Confidential Information. Deposition testimony so designated shall be treated as Confidential Information protected by this Order. Within fourteen days after delivery of the transcript, a designating party may serve a Notice of Designation to all parties of record identifying as Confidential specific additional portions of the transcript that were not previously designated Confidential Information, and thereafter those portions identified shall be protected under this Order.

5. General Protections. Confidential Information shall not be used or disclosed by the parties, counsel for the parties or any other persons identified in the following subparagraph (a) for any purpose whatsoever other than in this litigation, including any appeal thereof.

a. Limited Third-Party Disclosures. The parties and counsel for the parties shall not disclose or permit the disclosure of any Confidential Information to any third person or entity except as set forth in the following subparagraphs (i)-(ix). Subject to these requirements, the following categories of persons may be allowed to review Confidential Information:

i. Counsel. Counsel for the parties and employees of counsel who have responsibility for the action;

ii. Parties. Individual parties and their employees but only to the extent counsel determines in good faith that the employee's assistance is

- 1 reasonably necessary to the conduct of the litigation in which the
2 information is disclosed;
- 3 iii. The Court and its personnel;
- 4 iv. Court Reporters and Recorders. Court reporters and recorders engaged for
5 depositions;
- 6 v. Contractors. Those persons specifically engaged for the limited purpose of
7 making copies of documents or organizing or processing documents,
8 including outside vendors hired to process electronically stored documents;
- 9 vi. Consultants and Experts. Consultants, investigators, or experts employed
10 by the parties or their counsel to assist in the preparation and trial of this
11 action but only after such persons have completed the certification
12 contained in Attachment A, Acknowledgment of Understanding and
13 Agreement to Be Bound;
- 14 vii. Witnesses at depositions. During their depositions, witnesses in this action
15 to whom disclosure is reasonably necessary. Witnesses shall not retain a
16 copy of documents containing Confidential Information, except witnesses
17 may receive a copy of all exhibits marked at their depositions in connection
18 with review of the transcripts. Pages of transcribed deposition testimony or
19 exhibits to depositions that are designated as Confidential Information
20 pursuant to the process set out in this Order must be separately bound by
21 the court reporter and may not be disclosed to anyone except as permitted
22 under this Order.
- 23 viii. Author or recipient. The author or recipient of the document (not including
24 a person who received the document in the course of litigation); and
- 25 ix. Others by Consent. Other persons only by written consent of the producing
26 party or upon order of the Court and on such conditions as may be agreed
27 or ordered.
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1 b. Control of Documents. Counsel for the parties shall make reasonable efforts to
2 prevent unauthorized or inadvertent disclosure of Confidential Information.
3 Counsel shall maintain the originals of the forms signed by persons acknowledging
4 their obligations under this Order for a period of three years after the termination
5 of the case.

6 6. Inadvertent Failure to Designate. An inadvertent failure to designate a document
7 as Confidential Information does not, standing alone, waive the right to so designate the
8 document; provided, however, that no party may designate any documents produced or filed prior
9 to the entry of the Order not in violation of this Order or another order or agreement to keep such
10 information confidential as Confidential, and that the right to do so has been waived. Neither party
11 shall be found to have violated this Order for failing to maintain the confidentiality of material
12 during a time when that material has not been designated Confidential Information, even where
13 the failure to so designate was inadvertent and where the material is subsequently designated
14 Confidential Information.

See order issued
concurrently
herewith

17 7. Filing of Confidential Information. This Order does not, by itself, authorize the
18 filing of any document under seal. Any party wishing to file a document designated as
19 Confidential Information in connection with a motion, brief or other submission to the Court must
20 comply with the local rules and court orders.

21 8. No Greater Protection of Specific Documents. Except on privilege grounds not
22 addressed by this Order, a party may not withhold information from discovery on the ground that
23 it requires protection greater than that afforded by this Order unless the party moves for an order
24 providing such special protection.

25 9. Challenges by a Party to Designation as Confidential Information. The designation
26 of any material or document as Confidential Information is subject to challenge by any party. The
27 following procedure shall apply to any such challenge.

28 a. Meet and Confer. A party challenging the designation of Confidential Information
must do so in good faith and must begin the process by conferring directly with
counsel for the designating party. In conferring, the challenging party must explain

1 the basis for its belief that the confidentiality designation was not proper and must
2 give the designating party an opportunity to review the designated material, to
3 reconsider the designation, and, if no change in designation is offered, to explain
4 the basis for the designation. The designating party must respond to the challenge
5 within five (5) business days.

6 b. Judicial Intervention. A party that elects to challenge a confidentiality designation
7 may file and serve a motion that identifies the challenged material and sets forth
8 in detail the basis for the challenge. Each such motion must be accompanied by a
9 competent declaration that affirms that the movant has complied with the meet and
10 confer requirements of this procedure. The burden of persuasion in any such
11 challenge proceeding shall be on the designating party. Until the Court rules on the
12 challenge, all parties shall continue to treat the materials as Confidential
13 Information under the terms of this Order.

14 10. Action by the Court. Applications to the Court for an order relating to materials or
15 documents designated Confidential Information shall be by motion. Nothing in this Order or any
16 action or agreement of a party under this Order limits the Court's power to make orders
17 concerning the disclosure of documents produced in discovery or at trial.

18 11. Use of Confidential Documents or Information at Trial. Nothing in this Order shall
19 be construed to affect the use of any document, material, or information at any trial or hearing. A
20 party that intends to present or that anticipates that another party may present Confidential
21 Information at a hearing or trial shall bring that issue to the Court's and the parties' attention by
22 motion or in a pretrial memorandum without disclosing the Confidential Information. The Court
23 may thereafter make such orders as are necessary to govern the use of such documents or
24 information at trial.

25 12. Confidential Information Subpoenaed or Ordered Produced in Other Litigation.

26 a. If a receiving party is served with a subpoena or an order issued in other litigation
27 that would compel disclosure of any material or document designated in this action
28 as Confidential Information, the receiving party must so notify the designating

1 party, in writing, immediately and in no event more than three court days after
2 receiving the subpoena or order. Such notification must include a copy of the
3 subpoena or court order.

4 b. The receiving party also must immediately inform in writing the party who caused
5 the subpoena or order to issue in the other litigation that some or all of the material
6 covered by the subpoena or order is the subject of this Order. In addition, the
7 receiving party must deliver a copy of this Order promptly to the party in the other
8 action that caused the subpoena to issue.

9 c. The purpose of imposing these duties is to alert the interested persons to the
10 existence of this Order and to afford the designating party in this case an
11 opportunity to try to protect its Confidential Information in the court from which
12 the subpoena or order issued. The designating party shall bear the burden and the
13 expense of seeking protection in that court of its Confidential Information, and
14 nothing in these provisions should be construed as authorizing or encouraging a
15 receiving party in this action to disobey a lawful directive from another court. The
16 obligations set forth in this paragraph remain in effect while the party has in its
17 possession, custody or control Confidential Information by the other party.

18 13. Challenges by Members of the Public to Sealing Orders. A party or interested
19 member of the public has a right to challenge the sealing of particular documents that have been
20 filed under seal, and the party asserting confidentiality will have the burden of demonstrating the
21 propriety of filing under seal.

22 14. Obligations on Conclusion of Litigation.

23 a. Order Continues in Force. Unless otherwise agreed or ordered, this Order shall
24 remain in force after dismissal or entry of final judgment not subject to further
25 appeal.

26 b. Obligations at Conclusion of Litigation. Within sixty-three days after dismissal or
27 entry of final judgment not subject to further appeal, all Confidential Information
28 and documents marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE

ORDER” under this Order, including copies as defined in ¶ 3(a), shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction to the extent practicable in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so.

c. Retention of Work Product and one set of Filed Documents. Notwithstanding the above requirements to return or destroy documents, counsel may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information so long as that work product does not duplicate verbatim substantial portions of Confidential Information, and (2) one complete set of all documents filed with the Court including those filed under seal. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

d. Deletion of Documents filed under Seal from Electronic Case Filing (ECF) System. Filings under seal shall be deleted from the ECF system only upon order of the Court.

15. Order Subject to Modification. This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

16. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information by counsel or the parties is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

1 17. Persons Bound. This Order shall take effect when entered and shall be binding
2 upon all counsel of record and their law firms, the parties, and persons made subject to this Order
3 by its terms.

4 DATED: July 2, 2018.

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14 *Attorney for Counter-Plaintiff Brian Kabala*

15 IT IS SO ORDERED

16 
UNITED STATES MAGISTRATE JUDGE

17 DATED: July 3, 2018
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